

EXHIBIT E

New Antitrust Cases Drop Across The Board

By **Bryan Koenig**

Law360 (April 19, 2023, 11:02 PM EDT) -- New antitrust litigation, from both government enforcers and private plaintiffs pursuing individual cases and multidistrict litigation, continued to drop last year, reaching at least a four-year low point, according to a new Lex Machina report.

Just 437 new cases were filed last year across all types of plaintiffs pursuing civil antitrust claims under the Sherman Act, Clayton Act or Federal Trade Commission Act, reflecting a downward slide from a 2015 high of 1,069, **according to the Lex Machina report**.

Even excluding MDL-associated litigation, the overall count of new cases has been dropping from a 2019 high of 526 to 280 last year, according to Lex Machina. Looking at MDL master case filings, Lex Machina counted two filed last year, down from eight in 2018, five in 2019, four in 2020 and five in 2021.

New Cases on a Downswing

Counting MDLs, the number of new antitrust cases filed each year has been on a downward slide since 2015.



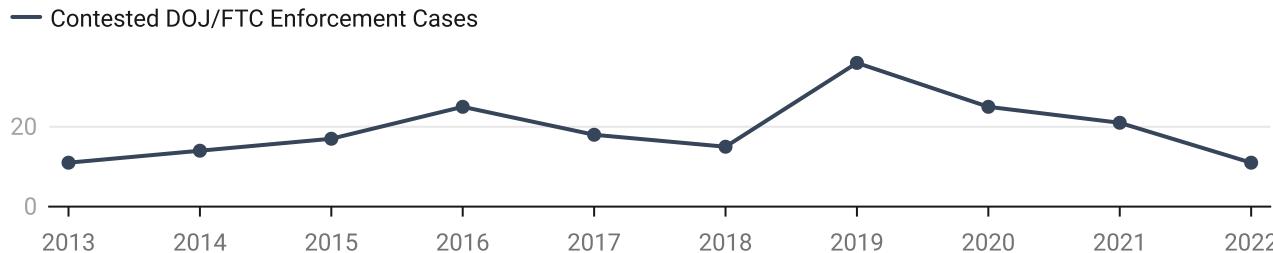
Source: Lex Machina • Created with [Datawrapper](#)

Perhaps most striking, amid a nationwide and global moment of attempted antitrust pushback against corporate concentration and online platform power, is a decline in contested civil enforcement actions brought by the U.S. Department of Justice and Federal Trade Commission against nonsettling defendants.

DOJ Antitrust Division leadership has boasted of a historically busy docket under the Biden administration (the new report doesn't count criminal cases) but that contrasts with warnings from the FTC's since-vacated Republican minority that the commission's aggressive enforcement stance hasn't matched its actual pace of litigation. Lex Machina's own numbers show just 11 contested cases filed by government enforcers in 2022, the fewest since 2013 and representative of a steady decline from a Trump-era 2019 peak of 36 new cases.

Contested Gov't Civil Cases Drop From Trump High

New FTC and DOJ civil enforcement actions against nonsettling antitrust defendants have fallen from Trump-era highs.



Source: Lex Machina • Created with [Datawrapper](#)

All those cases ended up on a predictable collection of court dockets, topped by the Northern District of California, home to many of the country's technology giants. Lex Machina counted 353 cases filed there over the past five years, just over 11% of all new antitrust lawsuits in that period. The Northern District of Illinois followed with 345 cases, after which it was the Southern District of New York with 244 cases and the DOJ's and FTC's home turf in the District of Columbia, with 202.

Dominating all dockets as the most active plaintiff was the DOJ, which filed 92 new cases from 2018 through 2022, followed by the state of California with 52. The FTC came in fifth, with 25. The most active private litigants were led by KPH Healthcare Services Inc. and The Kroger Co., which each filed 27, with Walgreen Co. on their heels with 24. Excluding MDLs pushed the FTC up to third place.

Private Plaintiffs as Busy as FTC

Two private plaintiffs actually filed more antitrust suits than the FTC when including MDLs.

Cases filed from 2018 to 2022

United States of America	
State of California	
KPH Healthcare Services Inc.	27
The Kroger Co.	27
Federal Trade Commission	25
Walgreen Co.	24
Mark Downey	22
Albertsons Cos. Inc.	20
CVS Pharmacy Inc.	19
Mayor and City Council of Baltimore	19

Source: Lex Machina • Created with [Datawrapper](#)

Including or excluding MDLs, the defendants facing the most cases were in turn dominated heavily by the food processing industry, which has been battling a wave of so-called protein litigation in recent years targeting alleged price fixing for everything from salmon to chicken, beef and pork. When including MDLs, Tyson Foods Inc. was hit with the most new cases, 215, between 2018 and 2022, followed by data analytics firm and alleged middleman Agri Stats Inc. at 176. The next four spots, when including MDLs, went to the country's four rail giants — Norfolk Southern Railway Co., Union Pacific Railroad Co., BNSF Railway Co. and CSX Transportation Inc. — followed by Google, Tyson Fresh Meats Inc., JBS USA Food Co. and Cargill Inc.

Excluding MDLs made for a top 10 list of the most active antitrust defendants composed entirely of food producers, with Perdue Farms Inc. now taking the No. 3 spot, according to Lex Machina, which tracked a steep drop-off in the number of new cases filed last year against the top 10 defendants, from dozens each of the previous four years, to single digits.

Food Cos. Most Prominent Defendants

Food processors have borne the brunt of antitrust litigation in recent years, with or without MDLs.

Cases filed from 2018 to 2022

Tyson Foods Inc.
Agri Stats Inc.
Norfolk Southern Railway Co.
Union Pacific Railroad Co.
BNSF Railway Co.
CSX Transportation Inc.
Google LLC
Tyson Fresh Meats Inc.
JBS USA Food Co.
Cargill Inc.

Source: Lex Machina • Created with [Datawrapper](#)

The plaintiffs firms filing those cases, when including MDLs, were led by Quinn Emanuel Urquhart & Sullivan LLP, which filed 127 cases in the past five years. Hagens Berman Sobol Shapiro LLP came second, with 106 cases, while Gustafson Gluek's 94 cases put it in third. Hausfeld LLP and Berger Montague rounded out the top five with 90 cases and 88 cases respectively.

Excluding MDLs put the DOJ on top and relegated Quinn Emanuel to eighth place, while Hagens Berman held onto its No. 2 spot with 72 non-MDL cases, followed by Berger Montague with 61.

On the defense side, Gibson Dunn & Crutcher LLP was the most active with or without MDLs. Including MDLs, the firm represented defendants in 189 new antitrust cases filed in the past five years and 99 when excluding MDLs. When including MDLs, the other top defense firms were Skadden Arps Slate Meagher & Flom LLP (164 new cases), Latham & Watkins LLP (153), Steptoe & Johnson LLP (148) and Kirkland & Ellis LLP (146).

Excluding MDLs, Kirkland was the second-busiest defense firm, with 89 cases. It was followed by Latham's 88, Skadden's 85 and Williams & Connolly LLP's 85.

Note: Law360 is owned by LexisNexis Legal & Professional, a RELX company, which owns Lex Machina.

--Editing by Linda Voorhis.

